

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION CONFERENCE COMMITTEE ON HOUSE AMENDMENTS TO SENATE BILL 48

Call to Order: By **CHAIRMAN MIKE SPRAGUE**, on April 6, 2001 at 11:00 A.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Sen. Mike Sprague, Chairman (R)
Rep. Joe McKenney, Vice Chairman (R)
Sen. Edward Butcher (R)
Rep. Dennis Himmelberger (R)
Rep. Gary Matthews (D)
Sen. Don Ryan (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: SB 48 Amended

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HEARING ON SB 48

CHAIRMAN MIKE SPRAGUE opened the conference committee meeting. They were to deal with the amendments only. To go into the body of the bill would only be for clarification for those who needed a review.

The bill was requested originally from the Dept. of Revenue and they asked him to be the sponsor. Another subsequent bill was requested by the distributors. Both of those bills were introduced early in the session. The bills came together basically with a compromise in the Dept's original request.

Any inference or accusations that special interests or the chairman brought this bill forward were to be dispensed with now. There have been innuendos bordering on the edge of threats. He wanted to clarify for the record how this bill originated.

In the original bill, there were no provisions made for shipping specialty wines that were perceived not to be available by the normal chain of outlets. During this process, there have been changes.

Comments and Questions from Committee Members and Responses:

CHAIRMAN SPRAGUE asked **REP. DENNIS HIMMELBERGER** to explain why and how his amendments came to be on the bill and his justification for the amendments.

REP. HIMMELBERGER explained that the bill had been brought to his attention at transmittal time. While he was at home, he received several phone calls from people who were concerned about SB 48. People who had been ordering specialty wines or beers from out-of-state wineries or breweries were concerned they would be prohibited from doing this. He did not want this to happen.

During the committee hearing on the bill, there were people who testified they were primarily ordering wine from small boutique wineries and felt the bill would prohibit them from doing that. He decided to address those concerns and see if an amendment could make everyone happy. In the hearing it was stated the Dept. was initially bringing the bill to prevent underage people from obtaining alcoholic beverages. Another Dept. concern was tax revenues. The Dept. believed the state was losing revenue because of direct shipments.

One solution was to create a connoisseur license. This seemed to address the Dept's concerns as well as others.

CHAIRMAN SPRAGUE explained to the committee that there were people in attendance who could answer most any question they might have. Most of the concerned entities were at the hearing.

CHAIRMAN SPRAGUE informed the committee that there had been a great deal of concern over the original bill in that people could

become felons. He asked the **Legislative Staffer, Gordon Higgins**, to speak to that issue.

Mr. Higgins stated that the bill in its original form contained a four-tier penalty system. The first three were civil offenses at different levels. The fourth or subsequent violation of the direct shipment issue would be a felony and the person would be fined an amount not to exceed \$25,000. That was the amendment the Senate heard prior to the bill being transferred to the House. That language was intact when it was transferred to the House Business and Labor Committee.

CHAIRMAN SPRAGUE asked for clarification. Was the violation on the part of the person receiving the wine or beer or was it on the shipper from out-of-state.

Mr. Higgins said that in looking at that language, a person convicted under subsection three, which is the lead in, states that a person in the business of selling alcoholic beverages in another state or country who imports or distributes these beverages in violation of Title 16, is the one who commits the offense. It was not the person who received the shipment.

CHAIRMAN SPRAGUE offered the Dept. felt that "felon" was the word that would trigger enforcement and confiscation or give them the ability to go to federal court across border lines. That was the first issue he wanted clarified once and for all. As it stood right now, "felon" had been taken completely out. The shipper nor the receiver could be convicted as a felon.

REP. HIMMELBERGER said that was correct but added that was not his amendment. It was **REP. RICK LAIBLE'S** amendment.

SEN. ED BUTCHER offered amendments **EXHIBIT (ccs78sb0048a01)**.

Motion: Senator Butcher moved that **SB 48 BE AMENDED (EXHIBIT 1) SB004802.ace**.

Discussion:

SEN. BUTCHER had heard the bill from the beginning. Penalties are put into statute either for an income source or a punitive source. The key here was the fourth violation. The people being addressed in the bill are from out of state. They might feel somewhat insulated from any punitive action if there were not a penalty at the level of some degree of enforcement by the state. He felt strongly that the bill should include the word "felony."

If a company violates the law three times, they certainly are going to pay attention if they had a felony action brought against them.

REP. HIMMELBERGER did not see the need for a felony action. There are already restrictions on out-of-state wineries or breweries.

Neil Peterson, Dept. of Revenue. In the House committee, they did amend the penalty provision to remove the felony and leave the fine at \$25,000 for the fourth offense (see amendment #10, page 6, line 14).

REP. MCKENNEY agreed with the amendment (**EXHIBIT 1**). Three minor warnings is more than enough. The fourth should be more punitive with a felony action.

REP. MATTHEWS also supported the amendment. The Dept. of Revenue needs all latitude in order to enforce the law.

CHAIRMAN SPRAGUE asked **Neil Peterson** to explain the Dept's view on the amendment.

Neil Peterson reported that he had spoken with Director Alme about the penalty provisions. Director Alme's opinion was the Dept. could forgo the felony provision; however, an increase of the fine would be satisfactory but he would leave that decision to the committee.

SEN. BUTCHER related that he did have another amendment that would address the amount of the fine. He did prefer his first amendment.

REP. HIMMELBERGER reiterated that the amount had been increased to \$25,000. With the restrictions on the limitations of imports, he felt these kinds of companies would not take the risk of violating the law more than once.

SEN. RYAN disagreed. If there should be a company that felt they were making more than the penalty, they might be willing to go ahead, violate the law and take the penalty. He felt that a felony provision would be a real hindrance.

CHAIRMAN SPRAGUE offered that if the Dept. can live without a felony provision, the committee should weigh in on that. He asked for clarification from the Dept. of Revenue.

Mr. Peterson articulated the Dept.'s rationale. The thinking behind the felony has two major points. If a felony provision is

on the books, a clear message is being sent to out-of-state businesses that Montana is taking their public policy very seriously. The next is for long-arm jurisdiction. If the state should go into another state's court system, a felony is treated very seriously. That state would take the case more seriously. In the spirit of cooperation, the Dept. believed the bill to be very important and did not want to jeopardize it over the issue of a felony provision. The Dept. decided to forgo the felony provision; and if the fine were increased, that would be acceptable.

SEN. BUTCHER felt that as the legislative body, it was their responsibility to look at what makes the most sense. It seemed to have been clearly expressed that the felony provision would give the Dept. the tool to enforce the law.

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SEN. BUTCHER mentioned that his second amendment would increase the fine from \$25,000 to \$50,000. He did feel that the felony provision was the main point.

CHAIRMAN SPRAGUE spoke to the committee and said they should take each issue in the following order: the quantity of beer and wine, the connoisseur's license, and the penalty provisions.

Gordon Higgins explained the quantities allowed for direct shipment to individuals holding a connoisseur's license are 24 cases of wine or 24 cases of beer within the 12 month period that the license was valid. He had broken down the cases of wine and beer by bottle in case a license holder wanted to receive a partial shipment. There are 288 bottles in 24 cases of wine. There are 12 bottles per case of wine or 9 liters a case. There are 576 bottles of beer in 24 cases. A combination of beer and wine, as the amendment is written, can be received under these provisions.

REP. MCKENNEY said that when the House had received this bill there were red flags. This seemed to be a troubled bill. Amendments were worked on in a subcommittee and **REP. HIMMELBERGER** and his group had done a good job. Their amendment was put on in the House committee. He then addressed **SEN. RYAN'S** question of whether the connoisseur's license was necessary. He definitely believed that it was if the bill were to be passed out. There were some misunderstandings concerning the amount of wine and beer that would be allowed.

Motion: REP. GARY MATTHEWS moved that SB 48 BE AMENDED
EXHIBIT(ccs78sb0048a02) Printed on April 6, 2001 (10:43AM)
 SB004804.agh.

Discussion:

REP. MATTHEWS explained that there seemed to be a great deal of concern on the quantity allowed to be delivered to individual Montanans. With a new license, consideration should be given to cutting the amount in half. Twenty-four cases of wine are a lot of wine. That is approximately one bottle of wine a day. He handed out a survey from other states with a similar kind of connoisseur license **EXHIBIT(ccs78sb0048a03)**. Twelve cases would still rank high in comparison with these other states.

Another issue in the amendment addressed the fact that wine and beer are different. A person may buy a wine connoisseur license for \$50 or a beer connoisseur license for \$50. If they wanted both it would cost \$100.

CHAIRMAN SPRAGUE asked **Jason Wood, Dept. of Revenue**, if the state had a law in statute concerning licenses at this time. **Jason Wood** stated that currently for an off-premise license, one could have a beer license, a wine license or a beer and wine license. The fee is \$200 for beer, \$200 for wine or \$400 for a beer and wine license. This amendment would basically mirror what is currently in place.

REP. HIMMELBERGER commented that the amendment seemed to muddy the waters. He asked if this amendment would increase the cost of administering the license. **Mr. Wood** felt that it would not significantly increase the cost. It would require a one page form and would not really put on any additional costs.

Vote: The AMENDMENT TO SB 48 BE ADOPTED. Motion carried 5-1.
Rep. Himmelberger voted no.

Neil Peterson, Dept. of Revenue. A point of note was a person could still bring in three gallons of liquor into the state on their physical person. A person could do that every day of the week. Go out of state and come back in. In SB 48 the only change was a person had to have the liquor in their actual physical possession.

REP. HIMMELBERGER wanted to go on record that he thought he was voting only on splitting up the licenses and not the quantity. He would have said more concerning the quantity but he also did not think that would have made any difference to the other committee members. He would have voted no on both issues.

SEN. BUTCHER stated again that his motion was still on the table and he still felt that the felony provision was needed.

REP. MCKENNEY said if this amendment were accepted then the language on page 6, line 14 needed to be taken out. **SEN. BUTCHER'S** amendment would be substituted into line 14 as the fourth subsequent offense.

REP. MCKENNEY asked how the Dept. would prefer to handle the prosecution of cases using civil or felony actions. **Mr. Peterson** reiterated a felony provision would give them additional clout to go into another state's court. A civil penalty might not receive the same serious attention in another state. But they do have the ability to go to federal court under the 21st Amendment Enforcement Act to get an injunction. With a large enough civil penalty, they believed that would give them sufficient clout.

CHAIRMAN SPRAGUE inquired if any other states have included a felony provision for this type of violation. **Mr. Peterson** said he thought there were five or six other states.

CHAIRMAN SPRAGUE then inquired if any other states have high penalties and no felony. **Mr. Peterson** was not sure. He knew of one state that fined an out-of-state shipper \$35,000.

Mr. Peterson said the least costly would be a civil action. People would resist a felony charge more than a civil penalty.

REP. MCKENNEY did not believe a winery or brewery would ever go beyond the first or second offense. If someone goes to the third or fourth offense, they would be purposefully breaking the law. Therefore, a felony provision would make sense.

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CHAIRMAN SPRAGUE thanked **REP. HIMMELBERGER** for his hard work on the bill. He asked him if he could support the bill as amended. **REP. HIMMELBERGER** replied that he was not too concerned with the felony amendment. He was mainly concerned with the quantities and he could not support the bill as amended.

SEN. RYAN did not think the Dept. really wanted or needed the felony provision at this time.

CHAIRMAN SPRAGUE suspected the felony provision would make the enforcement more difficult for the Dept. It appeared that the Dept. did not necessarily want the felony provision which was somewhat of a surprise to him. But, they are the ones who would

have to implement when everyone else is long gone. Therefore, which way should the committee go.

Mr. Peterson spoke and said the bill was very important to the Dept. and they wanted the bill to go in the direction of least resistance. Civil penalty was good and it was something they could make work. If there should be problems enforcing the law down the road, they can come back in the next session and ask for the felony provision.

REP. MCKENNEY thought the felony provision was a good idea but he would go with the Dept's wishes.

SEN. BUTCHER withdrew his amendment (**EXHIBIT 1**) that dealt with the felony provision.

Motion: **SEN. BUTCHER** moved that **SB 84 BE AMENDED EXHIBIT (ccs78sb0048a04) SB004801. ace.**

Discussion:

SEN. BUTCHER explained that the penalty fine would be raised from \$25,000 to \$50,000 for the fourth subsequent offense.

CHAIRMAN SPRAGUE asked if this amount would be acceptable to the Dept. **Mr. Peterson** responded that \$50,000 would be fine.

Vote: The AMENDMENT TO SB 48 BE ADOPTED. Motion carried 5-1.
Rep. Himmelberger voted no.

Two amendments for SB 48 were adopted by the committee. Gordon Higgins prepared the two into one amendment
EXHIBIT (ccs78sb0048a05) SB004804.agh, April 6, 2001 (12:38PM).

ADJOURNMENT

Adjournment: 12:15 P.M.

SEN. MIKE SPRAGUE, Chairman

MARY GAY WELLS, Secretary

MS/MGW

EXHIBIT (ccs78sb0048aad)